IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.651 OF 2007
IN
SUIT NO.349 OF 2007

M/s.Ajanta India Ltd. ....Plaintiff
V/s.
Nari Hotchandani & Anr. ....Defendants

Mr.V.R. Dhond with Mr.Utkarsh Tiwari i/b Shantilal & Co. for the Plaintiff.

CORAM : S.J. VAZIFDAR, J.
DATED : 11TH OCTOBER, 2007.

P.C. :

1. The Defendants are absent despite service. This is a passing off action. According to the Plaintiff, the Defendants are guilty of passing off their goods under the trade name DENTIFRESH. The Plaintiffs use on their products the mark DENTOFRESH.

2. The Plaintiff's mark is not registered. The Defendants' mark is registered with effect from 12.4.2002.

3. According to the Plaintiffs, their mark DENTIFRESH has been used in relation of dentifrices since 1997 openly and extensively. It was first

adopted and used by Vishnu Industries in relation to the said goods who continued the use thereof till the same was assigned in favour of one Kamlesh O. Goradia along with the goodwill of the business by a deed of assignment dated 7.11.2003. The said Kamlesh in turn assigned the said trade mark in favour of the Plaintiffs by a deed of assignment dated 31.12.2003.

4. The Plaintiff has inter-alia in paragraphs 11 and 12 averred the reputation that has developed in respect of the trade mark DENTOFRESH as well as various similar marks, such as DENTOWHITE, DENTOSTRONG, DENTOCARE and DENTOPEARK with effect from April, 2002. That the two words are deceptively similar visually and phonetically is clear.

5. The Defendants have not appeared. There is nothing on record therefore to controvert to the Plaintiff' case. Despite the fact that the Defendants' mark is registered, the Plaintiff has made out a case of prior user.

6. In the circumstances, the Notice of Motion is made absolute in terms of prayer (a) except the words bracketed in red.